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| APPLICATION NO.                             | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/648,590                                  | 08/25/2003  | Ricky W. Purcell     | 1443.053US1         | 4252             |
| 21186                                       | 7590        | 07/28/2005           | EXAMINER            |                  |
| SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. |             |                      | ROANE, AARON F      |                  |
| P.O. BOX 2938                               |             |                      | ART UNIT            | PAPER NUMBER     |
| MINNEAPOLIS, MN 55402-0938                  |             |                      | 3739                |                  |

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                               |                                |  |
|------------------------------|-------------------------------|--------------------------------|--|
| <b>Office Action Summary</b> | Application No.<br>10/648,590 | Applicant(s)<br>PURCELL ET AL. |  |
|                              | Examiner<br>Aaron Roane       | Art Unit<br>3739               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-16 and 29-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-16 and 29-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-16 and 29-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabin (USPN 6,099,555) in view of Avery (USPN 5,486,206).

Regarding claims 6-9, 12, 14, 32, 33 and 35, Sabin discloses a cold pack (1) comprising: an enclosure (entire outer covering consisting of 2 and 2a), a powdered solute (24) within said enclosure; a liquid (28) within said enclosure, a membrane (portion of 2 and 2a located at 7) segregating said liquid from said powdered solute, wherein rupturing said membrane mixes said liquid with said powdered solute to produce an endothermic solution within said enclosure, and an absorbent core (26 of 8) within said enclosure, said absorbent core retaining said endothermic solution to spread said endothermic solution throughout said enclosure. Sabin further discloses that the absorbent core (26 of 8) is an absorbent layer. Finally, Sabin discloses solute is interspersed throughout said

absorbent layer before said membrane is ruptured, see col. 1-11 and figures 2 and 3.

Additionally, it should be noted that the mixture of 24, 26 and 28 forms a gel, since 26 is a gelling agent. Sabin fails to disclose a fibrous material. Avery discloses a therapeutic thermal device comprising a gel (20) and teaches providing the gel with a fibrous material (e.g., 66) in order to increase gel viscosity and heat capacity, see abstract, col. 1-6 and figures 1-5. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Sabin, as taught by Avery, to provide the gel with a fibrous material in order to increase gel viscosity and heat capacity.

Regarding claims 10 and 15, Sabin further discloses rupturing said membrane causes the endothermic solution to be retained by said absorbent core, see col. 1-11 and figures 2 and 3.

Regarding claim 11, Sabin further discloses the membrane is polyethylene, see col. 1-11 and figures 2 and 3, particularly see col. 8.

Regarding claim 13, Sabin further discloses the powdered solute is substantially between 0.001 and 0.025 inches, see col. 1-11 and figures 2 and 3.

Regarding claim 16, Sabin discloses the claimed invention, see col. 1-11 and figures 2 and 3.

Art Unit: 3739

Regarding claims 29, 30 and 36, Sabin discloses the claimed invention, see col. 1-11 and figures 2 and 3, particularly see col. 1 and 2.

Regarding claims 31 and 34, Sabin in view of Avery discloses the claimed invention, see Avery col. 4.

#### *Response to Amendment*

The examiner acknowledges the amendments to the claims and drawings and that these amendments more clearly define the presently claimed invention.

#### *Response to Arguments*

Applicant's arguments with respect to claim 5/16/2005 have been considered but are moot in view of the new ground(s) of rejection. New prior art has been provided, Avery USPN 5,486,206 in order to address the amendments.

*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3739

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A.R.*  
July 22, 2005

*Roy D. Gibson*  
ROY D. GIBSON  
PRIMARY EXAMINER